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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (s) No. 1964 of 2005

Petitioner		Ku. Usha Kiran Mahobia, age 20 years, Daughter of Shri R.K. Mahobia, R/o. Near Sharda Mandir, Janjgir, Dist. Janjgir, MP.
	Versus	
Respondents	1)	State of M.P. through the Secretary, Ministry of School Education, Vallabh Bhawan, Bhopal.
	2)	District Education Officer, Janjgir, Dist. Janjgir, MP.
	3)	The Collector, Janjgir, District Janjgir, MP.

(Writ Petition under Article 226/227 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

Present:

Shri Deepak Jain, counsel for the petitioner
Smt. Anju Ahuja, Dy. Govt. Advocate for respondents No. 1 and 2.State.

ORAL ORDER
(Passed on 4nd May, 2007)

The petitioner was granted compassionate appointment on the post of Assistant Teacher, vide order dated 8-1-1998 (Annexure A/1) on account of death of her mother namely Smt. Pramila Mahobia, who died on 26-4-1995 in harness, while working as Assistant Teacher. Thereafter, vide order dated 17-3-1998 (Annexure A/3), her appointment was cancelled in view of the fact that the Government vide order dated 20-1-98 (Annexure A/4) decided not to appoint any person on compassionate basis after 1-1-1998.

2) The State/respondents subsequently considered the case of the petitioner and appointed her as Shiksha Karmi, Grade III vide order dated 19-2-1999 (Annexure A/6).

3) Learned counsel for the petitioner impugns the order dated 17-3-1998 (Annexure A/3) on the ground that by subsequent order, the appointment made earlier cannot be cancelled.

4) In the facts of the case, when the appointment of the petitioner itself was not in accordance with the constitutional scheme of employment, the petitioner cannot challenge the order dated 17-3-1998 (Annexure A/3) whereby her appointment was cancelled on compassionate basis which has been held by a catena of decisions of the Supreme Court that the compassionate appointment is not in accordance with the constitutional scheme of employment and is a back-door entry. However, keeping in view the fact that it was a facility granted to the family members of the deceased employee, the petitioner was thereafter offered appointment on the post of Shiksha Karmi Grade III.

5) Thus, at this stage, the grievance of the petitioner even otherwise, does not survive as the petitioner has refused the appointment on Shiksha Karmi Grade III on compassionate basis.

6) The petitioner has earlier filed Miscellaneous Application No.44/98 in the Madhya Pradesh State Administrative Tribunal, Raipur Bench, for the same relief seeking clear instructions to the respondents to appoint her as Assistant Teacher and to quash the order whereunder the appointment was cancelled. The Tribunal after having considered the case held that the petition was premature in view of the fact that the order for fresh appointment was made granted liberty to the petitioner to file a fresh petition, if the applicant is not satisfied or aggrieved against the said order, vide order dated 16-7-1999 (Annexure A/7)

7) It is well settled that compassionate ground is not a method of recruitment, but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.

8). The Supreme Court in **State of J.&K and others Vs. Sajad Ahmed Mir, (2006) 5 SCC 766**, after having considered all the aspects of compassionate appointment, in para 11 observed as under:

> "11..... It is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, on appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

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9). It is thus clear from the decision cited above that the petitioner cannot claim compassionate appointment as a right of inheritance.

10). In view of the above settled principles of law, there is no merit in this petition. The petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju